

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BHS (NEW YORK) CORPORATION,

Plaintiff,

v.

IBRAHIMA DIENE,

Defendant.
-----X

: 08 Civ. 00179 (LAK)

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:

:


**MOTION TO
DECLARE DEFAULT
AND FOR REFERENCE**

Upon the annexed Declaration with exhibits of Amos Alter, dated July 9, 2008, plaintiff moves for an Order declaring the defendant in default for failure to appear or answer, and referring the case to a Magistrate Judge for the purpose of conducting an inquest and entering judgment against defendant.

Dated: New York, New York
July 9, 2008

TROUTMAN SANDERS LLP

By: _____


Amos Alter

Attorneys for Plaintiff
The Chrysler Building
405 Lexington Avenue
New York, NY 10174
212-704-6000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BHS (NEW YORK) CORPORATION,

Plaintiff,

v.

IBRAHIMA DIENE,

Defendant.
-----X

: 08 Civ. 00179 (LAK)
:
: **DECLARATION**
: **IN SUPPORT**

AMOS ALTER declares:

1. I am Of Counsel to Troutman Sanders LLP, attorneys for plaintiff.

I make this Declaration in support of plaintiff's motion for an Order declaring defendant in default for failure to appear and answer, and for reference of the case to a Magistrate Judge for the purpose of conducting an inquest and entering judgment against defendant.

2. A copy of the complaint is annexed hereto as Exhibit "A". A copy of the Order of this Court (Kaplan, D.J.), authorizing service of the summons by publication, is annexed hereto as Exhibit "B". Copies of the affidavits of service by publication in conformity with the Order are annexed hereto as Exhibits "C" and "D".

3. Defendant is in default for failure to appear and answer. A copy of the Clerk's Certificate noting the default, which includes a copy of the docket sheet, is annexed hereto as Exhibit "E". The original of the Clerk's Certificate has heretofore been delivered to and is in the possession of Andrew Mohan, Courtroom Deputy to Judge Kaplan.

4. This motion is not being served on defendant, as his whereabouts are unknown, which is why this Court authorized service of the summons by publication.

5. No prior application for the same or similar relief has been made.

6. The relief prayed for should therefore be granted.

7. I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on July 9, 2008.

A handwritten signature in black ink, appearing to read 'A. Alter', is written over a horizontal line.

Amos Alter

EXHIBIT “A”

JUDGE KAPLAN 08 CV 00179

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

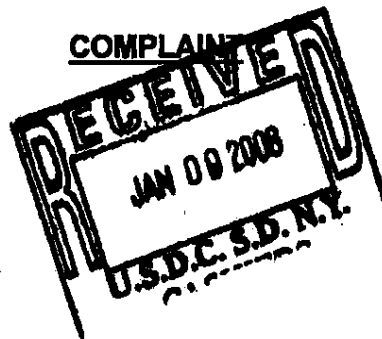
BHS (NEW YORK) CORPORATION,

Plaintiff,

v.

IBRAHIMA DIENE,

Defendant.



Plaintiff, by its attorneys, Troutman Sanders LLP, for its complaint,
alleges:

Jurisdiction and Venue

1. Plaintiff is a New York corporation, with its principal place of business in New York.
2. Upon information and belief, defendant is a citizen of Senegal, residing in New Jersey.
3. The amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.00.
4. A substantial part of the events or omissions giving rise to the claim occurred in the Southern District of New York.
5. Jurisdiction is afforded by 28 U.S.C. § 1332(a)(2). Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(2).

General Allegations

6. Plaintiff is a wholly-owned subsidiary of Banque de l'Habitat du Senegal, a Senegalese bank. Plaintiff is licensed and engaged in the business of money transmitting, primarily between the United States and Senegal.

7. At all times here relevant, defendant was employed as the Manager of plaintiff's New York office, and was Vice-President and Secretary of plaintiff.

8. During his tenure, and prior to December 31, 2005, defendant wrongfully converted \$508,814 of plaintiff's funds to his own use, no part of which has been repaid, despite due demand.

First Claim for Relief

9. Defendant owes plaintiff \$508,814, with interest from December 31, 2005, for conversion.

Second Claim for Relief

10. Defendant owes plaintiff \$508,814, with interest from December 31, 2005, for breach of the fiduciary duty he owed to plaintiff.

Third Claim for Relief

11. Defendant owes plaintiff \$508,814, with interest from December 31, 2005, for breach of his duty of good faith and loyalty as an employee.

WHEREFORE, plaintiff demands judgment against defendant, in the sum of \$508,814, with interest from December 31, 2005, together with the costs and disbursements of this action.

TROUTMAN SANDERS LLP

By: 

**Amos Alter
Attorneys for Plaintiff
The Chrysler Building
405 Lexington Avenue
New York, NY 10174
212-704-6000**

EXHIBIT “B”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| |
|---|
| USDS SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 7/2/08 |
|---|

-----X
BHS (NEW YORK) CORPORATION,

Plaintiff,

v.

IBRAHIMA DIENE,

Defendant.
-----X

: 08 Civ. 00179 (LAK)

: **ORDER**

Upon the accompanying declaration with exhibits of Amos Alter, dated March 11, 2008; it appearing that plaintiff has been unable to serve defendant with the summons and complaint because he has moved from his last known address and his current address is unknown; and it further appearing that defendant cannot with due diligence be served by another prescribed method; it is

ORDERED, that:


1. The summons in this action may be served upon defendant by publication pursuant to Fed. R. Civ. P. Rule 4(e) and New York CPLR 316, as set forth below.

2. The summons, together with a notice to defendant, containing a brief statement of the nature of the action, and the relief sought, shall be published in two newspapers, at least one in the English language, namely

The New York Times, published in New York, New York, and
The New York Daily News, published in New York, New York, both most likely to give notice to defendant, once in each of four successive weeks.

3. The first publication shall be made within thirty days after this Order is granted.

Dated: New York, New York
4/3, 2008



Hon. Lewis A. Kaplan, U.S.D.J.

EXHIBIT “C”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BHS (NEW YORK) CORPORATION,

Plaintiff,

v.

IBRAHIMA DIENE,

Defendant.

X

:

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:

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X

08 Civ. 00179 (LAK)

**SUMMONS WITH
AFFIDAVIT OF SERVICE
BY PUBLICATION**

STATE OF NEW JERSEY
COUNTY OF HUDSON

GAITY CABALLERO being duly sworn, says she is a principal clerk and a duly authorized designee of Daily News, L.P., publisher of the 'DAILY NEWS,' a daily and Sunday newspaper published in the City of New York and that the notice, of which the annexed is a copy, was published in said newspaper and online within the section of:

UNITED STATES DISTRICT
COURT, SOUTHERN DISTRICT OF
NEW YORK:

BNS (NEW YORK) CORPORATION,

Plaintiff, v.

ISRAELA DIENE, Defendant.

SUMMONS IN A CIVIL CASE:

Case Number: 08 CV 00179

JUDGE KAPLAN

To: Israela Diene, 294-514 10th

Street, Jersey City, NJ 07310

YOU ARE HEREBY SUMMONED

and required to serve upon PLAIN-

TIFF'S ATTORNEY, Troutman Sand-

ers LLP, The Chrysler Building, 405

Lexington Avenue, New York, NY

10174, an answer to the complaint

which is herewith served upon you,

within twenty days after the service

of this summons upon you, exclusive

of the day of service. If you fail to do

so, judgment by default will be taken

against you for the relief demanded in

the complaint. You must also file

your answer with the Clerk of this

Court within a reasonable period after

service.

J. MICHAEL McMAHON, Clerk, (by)

Deputy Clerk (signed) Leticia Curtis.

Date: Jan. 9, 2008

NATURE OF ACTION: In this alter-

cative action, plaintiff seeks to recover

from defendant ISRAELA, with interest

from December 31, 2005, under the

statute of conversion, breach of fiduciary

duty, and breach of duty of good faith

and loyalty as an employee.

TROUTMAN SANDERS LLP, Attor-

neys for Plaintiff, The Chrysler Build-

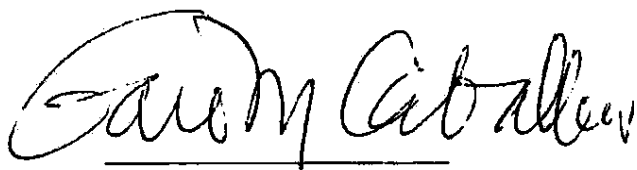
ing, 405 Lexington Avenue, New York,

NY 10174, 212-764-8000.

LEGAL NOTICES of the
CITY NORTH Edition

On April 17, 2008.

May 1 & 8, 2008

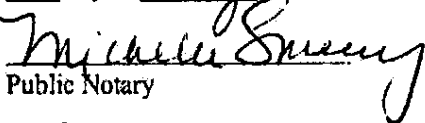


(Representative's signature)

Authorized Designee of Daily News, L.P.,
Publisher of the Daily News

Sworn to before me this

12 day of May 2008



Public Notary

MICHELLE SWEENEY
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires May 10, 2011
L.D. No. 2275207

EXHIBIT “D”



SEC. C7 PG 2

CERTIFICATION OF PUBLICATION

APR 21 2008

20

I, Alice Weber, in my capacity as a Principal Clerk of the Publisher of The New York Times a daily newspaper of general circulation printed and published in the City, County and State of New York, hereby certify that the advertisement annexed hereto was published in the editions of The New York Times on the following date or dates, to wit on

APR 20 2008

20

Approved:

Maria Pannullo

THIS CERTIFICATION
NOT VALID
WITHOUT NYT RAISED SEAL



SEC. *NT* PG 7

CERTIFICATION OF PUBLICATION

JUN 05 2008 20

I, Alice Weber, in my capacity as a Principal Clerk of the Publisher of The New York Times a daily newspaper of general circulation printed and published in the City, County and State of New York, hereby certify that the advertisement annexed hereto was published in the editions of The New York Times on the following date or dates, to wit on

APR 20 2008 20

Alice Weber

Approved:

Maria Pannullo

THIS CERTIFICATION
NOT VALID
WITHOUT NYT RAISED SEAL



SEC. *Cy* PG *6*

CERTIFICATION OF PUBLICATION

MAY 01 2008 20

I, *Alice Weber*, in my capacity as a Principal Clerk
of the Publisher of The New York Times a daily newspaper of general
circulation printed and published in the City, County and State of New
York, hereby certify that the advertisement annexed hereto was published
in the editions of The New York Times on the following date or dates
to wit on

APR 27 2008 20

Alice Weber

Approved:

Maria Pannullo

THIS CERTIFICATION
NOT VALID
WITHOUT NYT RAISED SEAL



The New York Times

620 8TH AVENUE • NEW YORK, NY 10018

SEC. *NJ* PG 23

CERTIFICATION OF PUBLICATION

MAY 01 2008 20

I, Alice Weber, in my capacity as a Principal Clerk
of the Publisher of The New York Times a daily newspaper of general
circulation printed and published in the City, County and State of New
York, hereby certify that the advertisement annexed hereto was published
in the editions of The New York Times on the following date or dates,
to wit on

APR 27 2008

20

Alice Weber

Approved:

Maria Pannullo

THIS CERTIFICATION
NOT VALID
WITHOUT NYT RAISED SEAL



SEC. *Cy* PG *16*

CERTIFICATION OF PUBLICATION

MAY 05 2008 20

I, *Alice Weber*, in my capacity as a Principal Clerk of the Publisher of *The New York Times* a daily newspaper of general circulation printed and published in the City, County and State of New York, hereby certify that the advertisement annexed hereto was published in the editions of *The New York Times* on the following date or dates, to wit on

MAY 04 2008 20

Alice Weber

Approved:

Maria Pannullo

THIS CERTIFICATION
NOT VALID
WITHOUT NYT RAISED SEAL



SEC. NS PG 12

CERTIFICATION OF PUBLICATION

MAY 05 2008 20

I, Alice Weber, in my capacity as a Principal Clerk
of the Publisher of The New York Times a daily newspaper of general
circulation printed and published in the City, County and State of New
York, hereby certify that the advertisement annexed hereto was published
in the editions of The New York Times on the following date or dates,
to wit on

MAY 04 2008 20

Alice Weber

Approved:

Maria Pannullo

THIS CERTIFICATION
NOT VALID
WITHOUT NYT RAISED SEAL

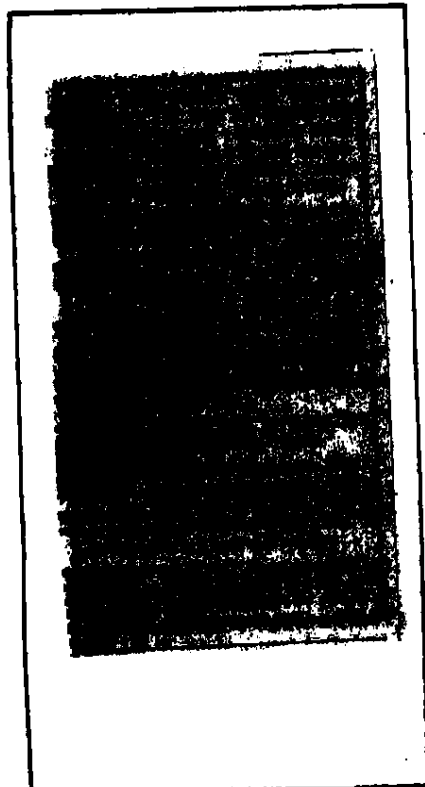


The New York Times

620 8TH AVENUE • NEW YORK, NY 10018

SEC. Cy PG J

CERTIFICATION OF PUBLICATION



8407-PUB 08

I, Alice Wikel, in my capacity as a Principal Clerk
of the Publisher of The New York Times a daily newspaper of general
circulation printed and published in the City, County and State of New
York, hereby certify that the advertisement annexed hereto was published
in the editions of The New York Times on the following date or dates,
to wit on

JUN 05 2008 20

MAY 11 2008 20

Approved:

Maria Pannullo

THIS CERTIFICATION
NOT VALID
WITHOUT NYT RANDED SEAL



SEC. NJ PG 6

CERTIFICATION OF PUBLICATION

JUN 05 2008 20

I, Alice Weber, in my capacity as a Principal Clerk of the Publisher of The New York Times a daily newspaper of general circulation printed and published in the City, County and State of New York, hereby certify that the advertisement annexed hereto was published in the editions of The New York Times on the following date or dates, to wit on

MAY 11 2008 20

Alice Weber

Approved:

Maria Pennullo

THIS CERTIFICATION
NOT VALID
WITHOUT NYT RAINBOW SEAL

EXHIBIT “E”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

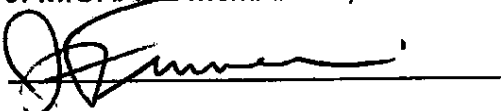
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|-----------------------------|---|----------------------------|
| -----X | | |
| BHS (NEW YORK) CORPORATION, | : | 08 Civ. 00179 (LAK) |
| Plaintiff, | : | |
| | : | |
| v. | : | CLERK'S CERTIFICATE |
| IBRAHIMA DIENE, | : | |
| | : | |
| Defendant. | : | |
| -----X | | |

I, **J. MICHAEL McMAHON**, Clerk of the United States District Court for the Southern District of New York, do hereby certify that the docket entries in the above-entitled action indicate that a complaint herein was filed and a summons issued on January 9, 2008; that an Order (Kaplan, D.J.) authorizing service of the summons by publication was entered herein on April 3, 2008; that the summons was published in the New York Daily News on April 17, April 24, May 1 and May 8, 2008; and that the summons was published in the New York Times on April 20, April 27, May 4 and May 11, 2008.

I further certify that the docket entries indicate that defendant has not filed an answer or moved with respect to the complaint herein.

The default of the defendant is hereby noted.

Dated: New York, New York
June 13, 2008

J. MICHAEL McMAHON, Clerk
By: 

ECF

U.S. District Court
United States District Court for the Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:08-cv-00179-LAK

BHS (New York) Corporation v. Diene
Assigned to: Judge Lewis A. Kaplan
Demand: \$509,000
Cause: 28:1332 Diversity-Fraud

Date Filed: 01/09/2008
Jury Demand: None
Nature of Suit: 370 Fraud or Truth-In-Lending
Jurisdiction: Federal Question

Plaintiff**BHS (New York) Corporation**

represented by **Amos Alter**
Troutman Sanders LLP(NYC)
405 Lexington Avenue
New York, NY 10174
212-704-6000
Fax: 212-704-6288
Email:
Amos.alter@troutmansanders.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant**Ibrahima Diene**

| Date Filed | # | Docket Text |
|------------|----------|--|
| 01/09/2008 | <u>1</u> | COMPLAINT against Ibrahima Diene. (Filing Fee \$ 350.00, Receipt Number 637798) Document filed by BHS (New York) Corporation.(jeh) (Entered: 01/10/2008) |
| 01/09/2008 | | SUMMONS ISSUED as to Ibrahima Diene. (jeh) (Entered: 01/10/2008) |
| 01/09/2008 | | Case Designated ECF. (jeh) (Entered: 01/11/2008) |
| 01/09/2008 | | Magistrate Judge Henry B. Pitman is so designated. (jeh) (Entered: 01/11/2008) |
| 01/09/2008 | <u>2</u> | RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by BHS (New York) Corporation.(jeh) (jeh). (Entered: 01/11/2008) |
| 01/09/2008 | | ***NOTE TO ATTORNEY TO E-MAIL PDF. Note to Attorney Amos Alter for noncompliance with Section (3) of the S.D.N.Y. 3rd Amended Instructions For |

| | | |
|------------|----------|---|
| | | Filing An Electronic Case or Appeal and Section 1(d) of the S.D.N.Y. Procedures For Electronic Case Filing. E-MAIL the PDF for Document 2 Rule 7.1 Corporate Disclosure Statement to: case_openings@nysd.uscourts.gov. (jeh) (Entered: 01/11/2008) |
| 02/04/2008 | <u>3</u> | ORDER that consistent with the law and rules governing the conduct of the US Postal Service, the Postal Service shall advise plaintiff's counsel of any forwarding address left by Ibrahima Diene regarding his former residence at 204 10th Street, Apt 514, Jersey City, NJ 07302. (Signed by Judge Lewis A. Kaplan on 2/4/08) (cd) (Entered: 02/05/2008) |
| 02/07/2008 | <u>4</u> | ORDER RE SCHEDULING AND INITIAL PRETRIAL CONFERENCE: Initial Conference set for 2/28/2008 at 10:00 AM in Courtroom 12D, 500 Pearl Street, New York, NY 10007 before Judge Lewis A. Kaplan. (Signed by Judge Lewis A. Kaplan on 2/5/08) (cd) (Entered: 02/07/2008) |
| 02/28/2008 | | Minute Entry for proceedings held before Judge Lewis A. Kaplan: Interim Pretrial Conference held and concluded on 2/28/2008 with plaintiff's counsel only. (djc) (Entered: 03/13/2008) |
| 03/11/2008 | <u>5</u> | DECLARATION of Amos Alter in Support. Document filed by BHS (New York) Corporation. (Attachments: # <u>1</u> Exhibit A - Summons and Complaint, # <u>2</u> Exhibit B - Affidavit of Attempted Service, # <u>3</u> Exhibit C - Order, # <u>4</u> Exhibit D - Letter, # <u>5</u> Exhibit E - Email, # <u>6</u> Text of Proposed Order Proposed Order) (Alter, Amos) (Entered: 03/11/2008) |
| 04/03/2008 | <u>6</u> | ORDER that the summons in this action may be served upon defendant by publication pursuant to FRCP Rule 4(e) and New York CPLR 316 as set forth herein. The summons, together with a notice to defendant, containing a brief statement of the nature of the action, and the relief sought, shall be published in two newspapers, at least one in the English language, namely The New York Times, published in New York, New York and the New York Daily News published in New York, New York, both most likely to give notice to defendant, once in each of four successive weeks. The first publication shall be made within thirty days after this Order is granted. (Signed by Judge Lewis A. Kaplan on 4/3/08) (dle) (Entered: 04/03/2008) |
| 05/22/2008 | <u>7</u> | SERVICE BY PUBLICATION. A Summons was published in the New York Daily News on 4/17, 4/24, 5/1, 5/8 2008. Document filed by BHS (New York) Corporation. (Alter, Amos) (Entered: 05/22/2008) |
| 06/11/2008 | <u>8</u> | SERVICE BY PUBLICATION. A Service by Publication was published in the New York Times on April 20, 27, May 4, 11, 2008. Document filed by BHS (New York) Corporation. (Alter, Amos) (Entered: 06/11/2008) |

| PACER Service Center | | | |
|----------------------|---------------|------------------|-------------------|
| Transaction Receipt | | | |
| 06/12/2008 11:23:26 | | | |
| PACER Login: | ts1665 | Client Code: | 037492.000002 |
| Description: | Docket Report | Search Criteria: | 1:08-cv-00179-LAK |

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| Billable Pages: | 2 | Cost: | 0.16 |
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